

OPINION
56-20

March 12, 1956 (OPINION)

CITIES

RE: Bonds; Is Swimming Pool "Public Bath" Within Meaning of City
Bond Laws?

Although the present bond law originated with Chapter 196 of the 1927 Session Laws, there was provision in sections 3818 (74) and 4016 of the 1913 Compiled Laws for issuance of city bonds for the erection of "public baths, or other public places of amusements or entertainment,"

Referring to the Century Dictionary, 1906 edition, at page 473 of volume 1, we find the following:

There are many kinds of baths, all of which may be divided into four classes: (a) According to the medium in which the body is immersed, as a water-, oil-, or mud bath, a compressed-air bath, a medicated or mineral bath, etc.; (b) According to manner of application or use, as a plunge-, shower-, vapor-, douche-, spray-, or swimming-bath, etc.; (c) According to the parts bathed as a foot-, sitz-, or eye-bath, etc.; (d) According to the temperature, as a hot, tepid, warm, or cold bath."

The same dictionary at page 6112 (volume 7) defines "swimming-bath" as "A bath large enough for swimming."

A building is defined as anything erected by art and fixed upon or in the soil, composed of different pieces connected together and designed for permanent use in the position in which it is so fixed. For example, a pole fixed in the earth is not a building, but a fence or a wall is. See 12 S.J.C. 378, et s. Search has not disclosed any special statutory restrictions upon the meaning or scope of the terms "buildings" or "public baths" as used in the statute now section 21-0306(2)(a), 1953 Supplement to the North Dakota Revised Code of 1943.

From the foregoing it seems clear that our statute is broad enough to sanction issuance of city bonds to finance construction of the kind of public bath building popularly known as a swimming pool. Former Attorney General Nels G. Johnson so ruled in a letter dated April 30, 1946, addressed to the city attorney of Valley City, North Dakota, in the third paragraph of which letter it was stated "that a swimming pool is and must be a public bath. . . .I know of no present-day public baths other than swimming pools."

Search of the bond law has not disclosed any provision requiring that the purpose for which bonds are proposed to be issued be stated in the precise words of the statutory statement of purpose for which bonds may be issued. Section 21-0309(5) of the North Dakota Revised

Code of 1943 requires that the initial resolution state the purpose for which bonds are proposed to be issued. Section 13 of the same chapter requires the ballot to show the purpose of the bonds. Section 18 requires that each bond shall bear a name "indicative of the purpose of the issue" specified in the initial resolution. In the case of Knudson v. Norman School District, 64 N.D. 779, 256 N.W. 224, our supreme court approved a ballot reciting that bonds were to issue "for the purpose of securing from the federal government approximately forty-one thousand six hundred dollars with which to build and equip * * * a * * * school * * *." Notwithstanding that the reference to the federal funds would appear to be a material, unauthorized addition to the ballot form, the opinion of the court made no reference to the variance. It was said that the question submitted to the voters was whether the district should issue bonds to "erect" a schoolhouse. This would seem to amount to a holding that wording of equivalent meaning may be interchanged in the course of bond proceedings.

Another generally accepted rule is that a municipality may issue bonds for a purpose which is within the scope of statutory authority. See 64 C.J.S. 478, et s.

Compare 63 C.J.S. 687. Where the statute "empowered a municipal corporation to acquire and manage parks" but did not specifically include power to establish a golf course" the supreme court of South Dakota held that the city of Vermillion had sufficient legal authority and power to acquire land for a golf course. See 59 N.W.2d. 732 at 733.

In the case of Maxcy v. City of Oshkosh, 144 Wis., 238, 31 L.R.A. (N.S.) 787, 128 N.W. 899, the opinion states that the statute authorized the city to vote for the "erection, construction and completion" of school buildings and there was the further provision that all bonds issued bear an appropriate name indicating the purpose of their issue. The bond ordinance recited that the bonds were issued "for the purpose of erecting, constructing and maintaining a manual training school building in and for the city of Oshkosh." The court held that the proceedings had were within the scope of the statutory provisions, it being decided that a school building could not be complete unless and until it was fully equipped for school purposes. "So we conclude that it is within the power of a city acting under section 926-11, St. to vote money to build and equip a school building." See page 912 of 128 N.W.

On the basis of commonly accepted definitions it seems clear that a swimming pool classifies as a kind of bath, being the equivalent of a swimming bath, according to at least one dictionary. It would therefore be competent for a city to undertake proceedings to issue bonds to construct a swimming pool by that name, and to so designate the proposed structure or building in the initial resolution, in the ballots and in the bonds.

LESLIE R. BURGUM

Attorney General